

# Evaluation, Due Process, Documentation & Progressive Discipline

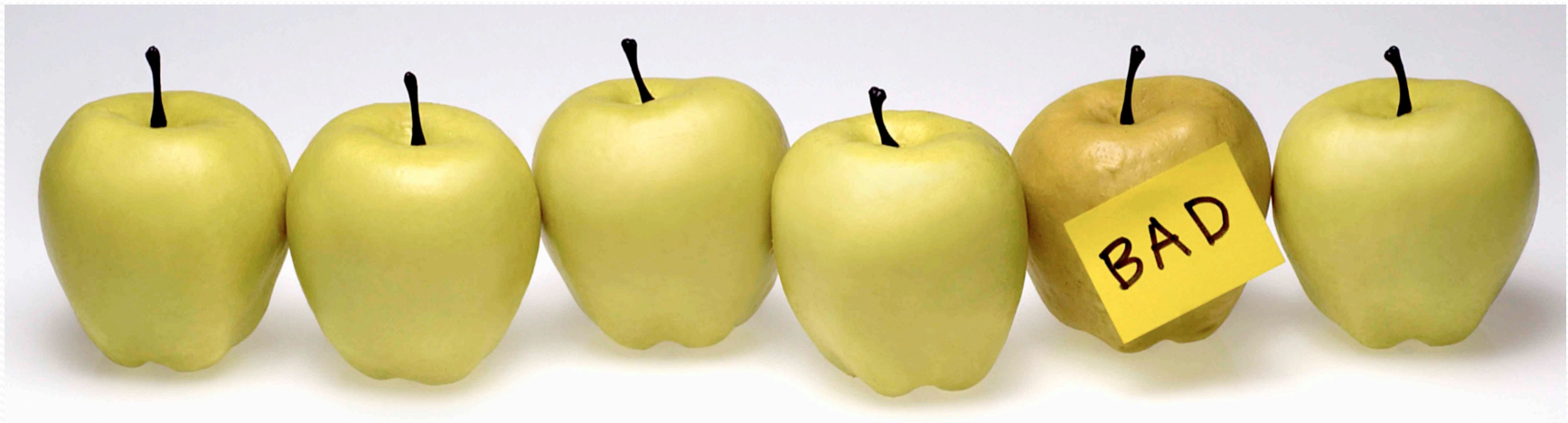


# Purpose of this workshop

- Understanding employee evaluation
- Assisting administrators in writing useful evaluation documents
- Understanding the overlap between evaluation and progressive discipline



Although the vast majority of District employees are competent, hard working, caring professionals, occasionally performance deficiencies and misconduct arise which must be addressed through employee evaluation and discipline.





# Purpose of an Evaluation

- Evaluation is a cooperative and continuous process that is aimed at improving and maintaining quality educational programs, while serving as an essential component in each employee's professional development.



# Evaluation Goals

- Maximize employee effectiveness and performance
- Stimulate professional growth
- Promote overall school improvement and instructional services for students
- Progress toward district and school goals
- Provide formal communication for building trusting relationships

# Ingredients of an Effective Evaluation Process

- A pre-conference and post-conference (summary)
- Structured Observations and Evaluations
- Documentation (Identify things employees are doing well and those items that are in need of improvement) and
- Progressive Assistance/Plan of Improvement (If Needed)



# Process & Prerequisites For A Successful Evaluation



- Do not rush or wait until the last minute
- Must be a **PRIORITY** with resources and time allocated
- Must have **ESTABLISHED CRITERIA** (Collective Bargaining Agreement, and Board Policy, MOU)
- Must follow **PROCEDURES** and apply them consistently
- Must provide opportunity for **REMEDIATION** (Assistance Plan)
- Must allow time for **IMPROVEMENT**
- Must have **TRAINED** and **COMPETENT EVALUATORS!!!**



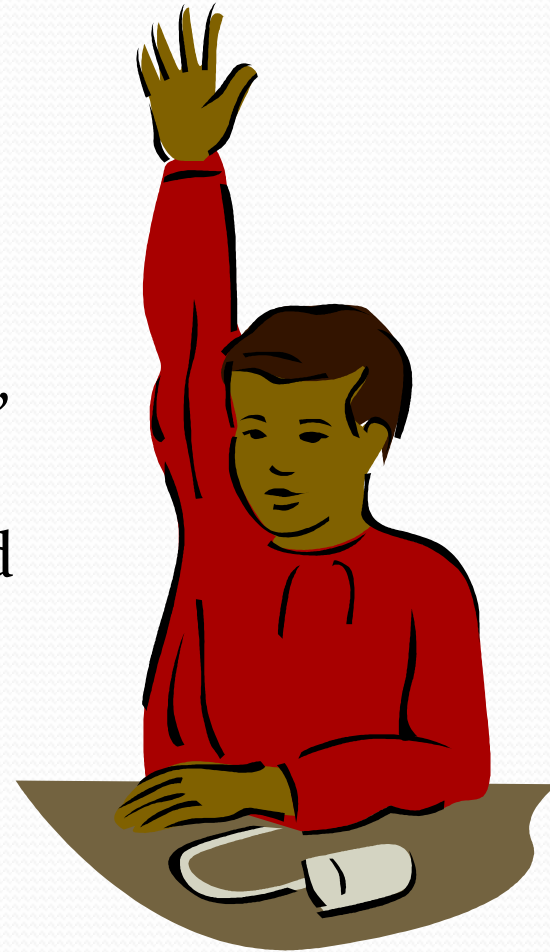
# The Evaluation Process

## According to the Policy (Example)

- The District shall evaluate all tenured employees once every three years. An underperforming employee may be evaluated more frequently.
- All non-tenured teachers shall be evaluated twice yearly until tenure is earned.
- \*Note: check your district's policy, handbook and CBA

# Things to consider in the evaluation

- Completion of reports as required by the District policy so long as these policies have been communicated to the unit member.
- Performance of duties, obligations, and responsibilities.
- Compliance with all policies and administrative regulations adopted by the Board.
- Job Description.
- Written notification of unsatisfactory performance and assistance plans.



**An administrator shall not use unsubstantiated hearsay as a basis for formal evaluations.**





# Areas in need of Improvements

If an area of improvement is identified, the evaluator/administrator shall offer positive assistance (Plan) aimed at achieving the desired improvement. The evaluator will document specific recommendations and/or expectations to be achieved.

- The purpose of an “effective” evaluation program is to maintain and improve the quality of the instructional program, as well as to *ensure employees are performing at their optimum level.*
- Evaluation should be done in a manner of mutual respect and collaboration.
- Keep in mind that the *end result should be a better learning environment for student learning, as well as a better performing employee.*

# The Golden Nugget

- Go Slow When Recommending Tenure
- Move Fast On Recommending Non Renewal
- Permanent status should be as hard to obtain as it is to take away



# Due Process (Progressive Discipline) & Documentation



# Due Process Standards

## Employee Should:

- Know clearly what rules must be followed
- Be informed of expected standards of performance
- Have the right to be given appropriate feedback
- Be given the chance for improvement
- Receive professional assistance, if necessary



# For The Employee To Improve Performance...the administrator should:



- Provide CLEAR and UNEQUIVOCAL DIRECTIONS
- Provide specific TIMELINES
- Clearly indicate CONSEQUENCES
- Provide specific DIRECTION and GUIDANCE for IMPROVEMENT

# “FRISK” Documentation Model



- F = **Facts** of the incident
- R = **Rule** that was broken
- I = **Impact** of employee behavior
- S = **Suggestions** for improvement
- K = **Knowledge** of what should be done

## F = Facts:


- *What did the employee do?*

**Pinpoint** the specific conduct and describe the conduct in **complete and explicit terms**. If necessary, supplement general statements with specific examples to provide a proper foundation. Avoid **factual errors**.



# Bad Language Example

- A classified evaluator, having concerns about a clerical employee's excessive typing errors, misfiling of documents, and failure to record telephone messages, COMBINES THESE DEFICIENCIES INTO A BROAD GENERAL DESCRIPTION:



*“Your inadequate clerical skills as reflected in your failure to document telephone messages, excessive typing errors, and misfiling of documents are unacceptable. Your unsatisfactory performance has caused this office unnecessary delay in the completion of required tasks, and has resulted in complaints from students and parents whose telephone messages were not returned.”*



# Good Language Example

- A classified evaluator, having concerns about a clerical employee's excessive typing errors, misfiling of documents, and failure to record telephone messages, SEPARATELY DESCRIBES AND DOCUMENTS EACH PERFORMANCE DEFICIENCY:

*Pinpoint . . . Complete and Explicit Terms*



## Typing Errors:

“On January 14, 2011, you made 18 separate typing errors in the attached two-page letter to the Haywood School PTA President, Mary King. The errors included misspellings and inaccurate punctuation. These mistakes were identified by Ms. King who shared the letter with the Board President.



## Misfiling Documents:

“On January 11, 2011, you placed the classroom observation reports for Nancy Green, a 5<sup>th</sup> grade teacher at Page Elementary School, in the wrong personnel file. As a result, I was unable to locate these documents when I needed them for an evaluation conference with Ms. Green. This caused me to violate the timeline requirement in the certificated collective bargaining agreement.”



## Describing Conduct in Complete and Explicit Terms

- Use specific factual details, such as dates, names, titles, places, events, witnesses, and *employee admissions*
  - complete and clear
  - self-contained
  - explicit in identifying the problem
- Use specific examples
- Use visual evidence of the employee's work (attach documents, photos, etc.)



# Reasonable Person Test

The test for determining whether a factual statement is sufficiently complete and explicit is: Would another person unfamiliar with the employee's unsatisfactory performance understand **what the employee did that created the problem** based on reading the factual statement, **without having to refer to any other information source?**



## R = Rule:


- *What should the employee have done?*

Include the rule, authority or expectation relating to the deficient performance, such as board policies or administrative regulations, labor contract provisions, adopted curriculum, administrative directives, job description, Montana Code sections, recognized professional standards, AND include prior same rule violations.



# Examples

- “Your conduct violated Article 4, Section 2 of the Collective Bargaining Agreement, which requires that you be in your classroom fifteen (15) minutes before the start of your class.
- Your conduct violated my **announcement** at the staff meeting on September 1, 2010, at which I stated that lesson plans are to be completed on the attached district form.”

- 
- “Your conduct violated my letter dated May 15, 2010, in which I **directed** you to remove the grease on the basketball courts at Carson Middle School by May 27, 2010.”
  - “Your conduct violated your **job description**, which specifically requires you to draft District notices in Spanish, when requested by your principal.”



## The “Rule” set by an evaluator will be valid if it is:


- Reasonably clear and understandable;
- Reasonably related to the efficient and orderly operation of the school/district/ program;
- Uniformly applied; and
- Not inconsistent with labor contract provisions, board policies, administrative regulations, or laws.



# Include Prior Same Rule Violations

Prior violations of the same common rule by an employee should be referenced by the evaluator in disciplinary documentation. This is important for the purpose of:

- Emphasizing the **recurrent** nature of the employee's deficient conduct.

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- Establishing **patterns** of similar deficient conduct for disciplinary action.
  - Justifying **harsher corrective action** under progressive discipline.
  - Communicating to the employee the extent and level of your **awareness** of the problem.



# Examples

- “Your conduct violated Article 4, Section 2 of the Collective Bargaining Agreement, which requires that you be in your classroom fifteen (15) minutes before the start of your class. **In the past, you have failed to comply with this requirement** as follows: September 2, 12, and 15, 2010 (10 minutes late each time).



# Summary Tips:

Because patterns of common related rule violations are important in the documentation process, evaluators should:

- **Check** for recurrent rule violations when analyzing performance problems, and
- **Keep track** of recurrent rule violations by maintaining an updated record.



## I = Impact:

- *What was the impact of the employee's conduct on the district?*

Include facts which describe the negative or adverse effect of the employee's conduct on the District, other employees, students, and parents.



# Examples

- “Your failure to follow the District assertive discipline policy has **unduly disrupted the classroom learning environment**, causing student distraction and lack of attention to your lessons.”
- “Your failure to supervise students on the playground **exposed the students to injury** and therefore possible District liability.”



## Connect the employee's deficient conduct to the adverse impact on the school or district

- “Your conduct [misfiling personnel documents] adversely affected the efficiency of the personnel department inasmuch as employees were unable to find the employment records and the District had to authorize twelve (12) hours of overtime pay for additional clerical assistance to correct the filing.”

# Tie Abstract Conduct to the Job

Including facts to connect an employee's deficient conduct to the job is necessary where the conduct is abstract or caused by an activity or condition not directly arising from the job itself, such as:

- Alcohol and other drug abuse
- Excessive absenteeism
- Physical or mental incapacity
- Immoral conduct
- Temperamental inadequacies

# Warning!

In these types of cases a school district cannot sustain its burden of proof at a disciplinary hearing *without sufficient job impact evidence*.



## S = Suggestions:

- When and what do you want the employee to do to improve performance? What will happen if there is no improvement? How can you help the employee to improve?

Include clear and unequivocal directions on the proper conduct you expect the employee to follow, the effective timelines, and the consequences if the employee fails to comply, AND include specific suggestions for improvement.



## Legally sufficient documentation requires an evaluator to give:

- **Directions** on the proper conduct or level of performance expected to be followed in the future; and
- **Suggestions** or recommendations to assist employees in meeting these requirements.



Directions must:

- Be **clear, factually specific and unequivocal**;
- Include effective **timelines**; and
- Include the **consequences** for non-compliance.



# Bad Language Examples

- “Perhaps you should be friendlier to other employees.”
- “I suggest that you be more careful with personnel files.”



# Good Language Example

- “Effective immediately, you are directed to refrain from using derogatory language, such as ‘stupid’ and ‘dumb’, towards your co-workers. Failure to comply with this directive will result in the issuance of a letter of reprimand.”



# Suggestions for Improvement

1. Recommend specific ways an employee may improve; and
2. Endeavor to assist the employee.



## K = Knowledge:

- Does the employee have knowledge of the document as required by the Collective Bargaining Agreement?

Include language notifying the employee of the right to file a response to a derogatory document prior to the document's placement in the personnel file.



# Warning!

This knowledge requirement is important since any derogatory documentation placed in the employee's personnel file without prior notice is arguably defective and not admissible as evidence in a disciplinary hearing.



# Sample Language

I will place this letter of reprimand in your personnel file within five (5) workdays. You have the right to respond in writing to this letter within the five (5) workdays. If you do so, I will attach your response to this letter and place both in your personnel file.



# Summary for **F R I S K**

## **FACTS**

- The statement of facts should be a self-contained record of the employee's conduct and should clearly identify the problem.
- Examples and samples of the employee's work should be used to supplement general statements to add detail



## RULES

- To justify disciplinary action, the employee must first be aware of the rule or standard expected to be followed in order to be accountable for any subsequent recurring violation. (handbook signature)
- Prior violations of the same rule should be noted in the disciplinary document in order to best document patterns of similar deficient conduct. This approach underscores the evaluator's awareness of the problem and helps justify harsher corrective action under progressive discipline.



## IMPACT:

- Present evidence that shows the adverse impact of the employee's conduct on District operations (i.e., school or department) and other persons (i.e., students, other employees, or parents).



## SUGGESTIONS/DIRECTIVES

- Directions must be clear and unequivocal and include timelines and consequences for the employee's failure to comply.
- Suggestions for improvement are important to demonstrate that the employee was given adequate opportunity to correct a deficiency.

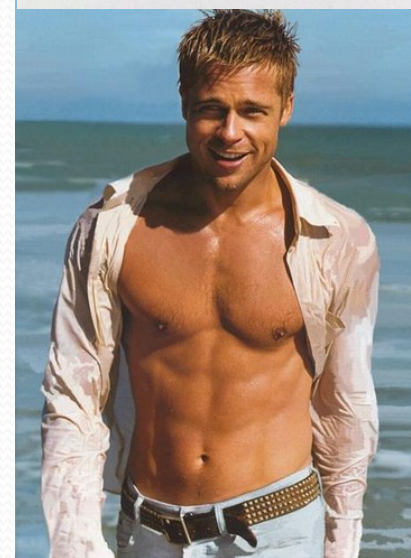


## KNOWLEDGE

The general rule is that any document that could serve as a basis for affecting employment status in the future should be provided to the employee and placed in the employee's personnel file within a reasonable period of time after recognizing and validating the performance problem.

# Effective Documentation: BRADS

- Background
- Rule
- Analys<sup>i</sup>s
- Directives
- Support





# Background

- What happened?
- Who is involved?
  - Employees?
  - Students?
  - Parents?
  - Non-employees?
- When did the incident occur?
- Where did the incident occur?
- Has this, or similar misconduct, occurred before?



# Rules

- Federal and/or State laws and regulations
- Board Policies & Administrative Regs
- District or school site rules
- Previous directives or instruction
- Collective Bargaining Agreements
- Common courtesy and/or decency



# Analysis

- Explain how the employee's conduct violated the rules of conduct
- Explain the impact or effect of the conduct on the worksite, school, district, etc.
  - Students
  - Other employees
  - Reputation
  - Potential liability



# Directives

- Issue directives designed to correct the employee's misconduct/unsatisfactory performance
  - Explain the District's expectations
  - Explain, specifically, what the employee needs to do (or not do)
- Directives should be clear and understandable
- Compliance with directives should be measurable and not optional

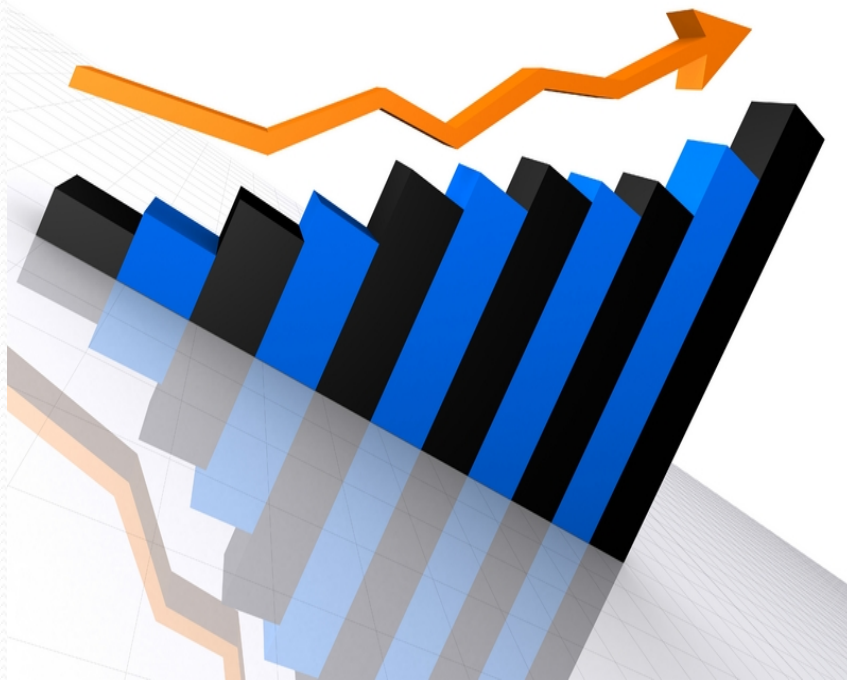


# Progressive Discipline

In selecting the proper disciplinary document, always ask yourself –

*“Have I considered the progressive discipline process to determine the appropriate document to use in recording the employee’s deficient performance?”*

# Progressive Discipline



- A “progressive discipline” model is the process of using increasingly severe steps or measures when an employee fails to correct a deficiency after being given a reasonable opportunity to do so
- The underlying principle of sound progressive discipline is to use the **least severe action** that is necessary to correct the performance deficiency or misconduct



# Progressive Discipline

- Goal: give employee **notice** and an **opportunity** to remedy performance problems.
- Goal: not to punish, but to strongly alert the employee of the performance problems.
- Corollary: to justify further disciplinary action if remedial efforts unsuccessful

# Examples of Progressive Discipline


- Oral warning
- Conference meeting/  
Conference summary
- Letter of warning/  
Memo of concern
- Letter of reprimand
- Performance  
Improvement Plan
- Suspension
- Termination





# Considerations

- Degree of seriousness of the employee misconduct.
- Past similar conduct.
- Likelihood that the employee's misconduct may have adversely affected other people and/or the district.
- Extenuating or aggravating circumstances surrounding the conduct.

- 
- Praiseworthiness or blameworthiness of the employee's motives resulting in the conduct.
  - Need to establish a pattern of conduct.
  - Reasonable relationship between the degree of disciplinary action and the seriousness and nature of the offense.
  - Uniformity in application to other employees in similar circumstances.
  - Policies and practices of the school district personnel office.



## Progressive Discipline Step Selection

An evaluator (administrator) should apply the normal progressive discipline sequence, which begins with an oral warning. Any variation in this sequence should be based on the following factors:

- Limitations expressed in labor contracts, board policies and administrative regulations
- The severity of the instance – refer to guidelines

# Steps of a Reprimand

- Get Facts First Hand
- Plan Your Approach
- Arrange for a private meeting
- Get the employee's side of the story
- Design the reprimand to fit the employee
- Criticize the action not the person
- Have the employee take ownership for the problem
- Make sure the employee knows that repeating the action will result in further disciplinary action





and

Document,  
Document,  
Document!!!

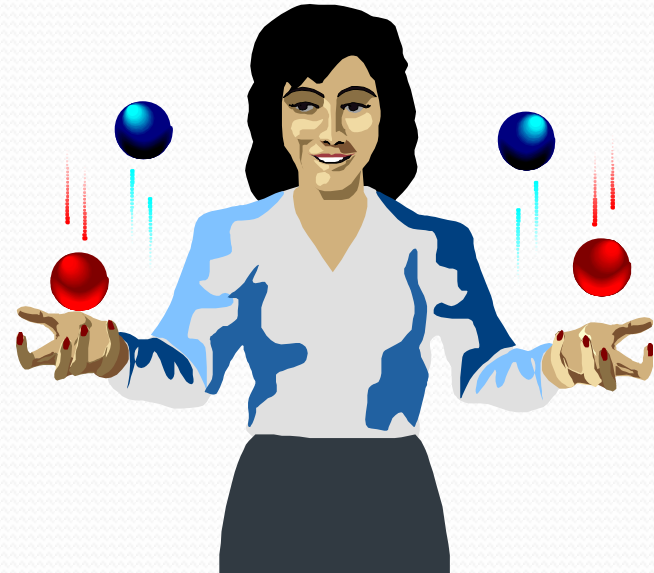
# Seven Elements of “Just Cause”



- Was there advance notice of consequences of conduct?
- Was the rule reasonable?
- Did the employee really violate the rule?
- Was the investigation fair and objective?
- Was there substantial proof?
- Has the rule always been applied equitably?
- Was the discipline reasonable?

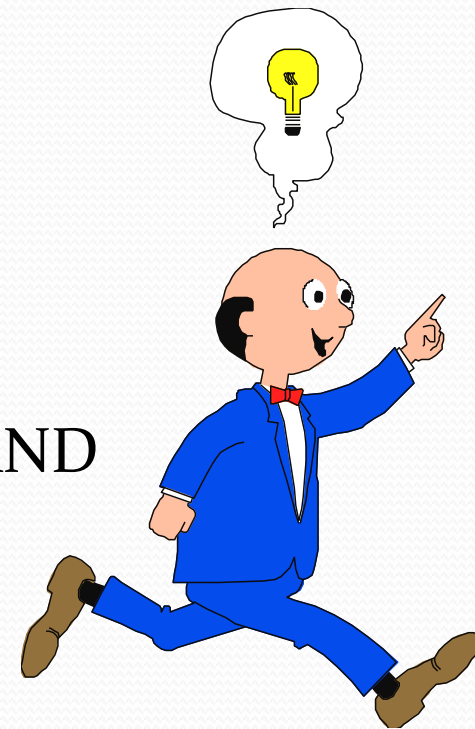
# Guidelines For Correctional Conference

- Time
- Schedule
- Private Setting
- Advance Notice
- Union Representation
- Plan & Identify Behavior
- Role as Supervisor
- No Unreasonable Excuses
- Cordial but Direct
- Interrogatory not Accusatory
- Stick to your Issue
- Clear Directions
- Assistance to be Provided
- Always Write A Conference Summary



# Helpful Hints when Meeting with Employees

- The Union's Role...
- Concentrate on... the employee's performance
- Follow... (rule), Contrast (sections), AND (regulations)
- Be...prepared!
- Keep...Focused!
- Control...The meeting!
- Don't agree to anything that you aren't authorized to agree to or cannot deliver





# Critical Learnings

*Everyone deserves the opportunity to:*

- *Share a perspective*
- *Explain his/her action*
- *Receive honest feedback and support*
- *Have an opportunity to grow*
- *Be treated with respect and dignity*



# Critical Learning

*If it is not documented,  
it did not happen.*



# Scenario #1

- A high school principal finds himself on the periphery of a one sided shouting match between one of his teachers and another staff person. His teacher is doing all the shouting and being physically intimidating. This match is in a classroom; however, there are students in the hallway. What steps should be taken immediately and what follow-up should be completed?



## Scenario #2

- Professional development, for teachers, is occurring during their work hours and most teachers show up consistently. However, there are a handful of teachers that are consistently absent—they may or may not be in the building, but just don't show up. Lately, some of the teachers that always show up are starting to not show up. What steps should be taken immediately and what follow-up should be completed



# Resources

- These sample letters might be helpful for administrators:

Non-tenured:

- Notice of Recommendation of Nonrenewal
- Recommendation of Nonrenewal
- Notice of Nonrenewal

Tenured

- Notice of Recommendation to Terminate
- Recommendation to Terminate
- Receipt of Recommendation for Termination
- Scheduled Hearing on Recommendation for Termination
- Notice of Non-renewal